

---

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

---

JEFF PARROTT,  
*Complainant,*

v.

SOUTH BEND PUBLIC TRANSPORTATION CORPO-  
RATION,  
*Respondent.*

---

Formal Complaint No.  
18-FC-30

---

Luke H. Britt  
Public Access Counselor

---

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the South Bend Public Transportation Corporation (“TRANSPO”) violated the Access to Public Records Act<sup>1</sup> (“APRA”). TRANSPO has responded via attorney Jamie Woods. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

---

<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

by the Office of the Public Access Counselor on January 15, 2018.

## **BACKGROUND**

Jeff Parrott (“Complainant”), a reporter with the South Bend Tribune, filed a formal complaint against the South Bend Public Transportation Corporation alleging TRANSPO violated the state’s Access to Public Records Act (“APRA”) by providing an insufficient response to a request for the factual basis for the CEO’s termination.

The Complainant wrote an article published by the South Bend Tribune on February 1, 2018,<sup>2</sup> discussing certain events leading to the termination of the CEO. TRANSPO’s Board of Directors voted to terminate CEO David Cangany on December 27, 2017. The Complainant obtained emails in a different public records request that indicated that the CEO acted aggressively toward staff. This Office does not have a copy of the original request, but the Complainant indicates that he requested the factual basis for the CEO’s termination. On January 11, 2018, TRANSPO’s attorney Jamie Woods responded to the request by stating that the “Dismissal Not for Cause” clause in the CEO’s employment contract served as the factual basis for the termination. This clause provided that the CEO could be fired without cause if TRANSPO paid him half of his annual salary (\$98,000) as severance pay, which TRANSPO has done.

---

<sup>2</sup> Jeff Parrott, *Transpo CEO Accused of Verbal Abuse, Demeaning Behavior Before He Was Fired*, SOUTH BEND TRIB., Feb. 1, 2018, available at [https://www.southbendtribune.com/news/local/transpo-ceo-accused-of-verbal-abuse-demeaning-behavior-before-he/article\\_4ab9b4bf-27ff-597a-9c73-9f8d5d391634.html](https://www.southbendtribune.com/news/local/transpo-ceo-accused-of-verbal-abuse-demeaning-behavior-before-he/article_4ab9b4bf-27ff-597a-9c73-9f8d5d391634.html).

The Complainant asserts that TRANSPO's response is insufficient and that TRANSPO is statutorily required to provide more information regarding the factual basis for termination than merely pointing to the "Dismissal Not for Cause" clause of the CEO's employment contract.

In its response, TRANSPO insists the reasoning for the termination (and termination is explicitly used as the action taken) was without cause. The employment contract was again cited as justification for not providing any additional information.

### **ANALYSIS**

APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. To the best of our knowledge, the South Bend Public Transportation Corporation is a public agency for the purposes of the APRA; and therefore, subject to its requirements. Ind. Code § 5-14-3-2(n). Thus, any person has the right to inspect and copy the City's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

Agencies have discretion to withhold release of personnel files of public employees, except for (A) the name, compensation, job title, business address, business telephone number, job description, education and training background,

previous work experience, or dates of first and last employment of present or former officers or employees of the agency; (B) information relating to the status of any formal charges against the employee; and (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

A contract does not usurp the provisions of Indiana Code nor does the fact that the agreement to the terms of the contract were mutually agreed upon imply that the *termination* of the contract was mutual. Otherwise nothing prevents an agency from contracting with all public employees and avoiding the provisions of Ind. Code § 5-14-3-4(b)(8)(C) altogether.

The totality of the circumstances indicate the separation was not mutual, but there were allegations of a hostile work environment leading to termination. This is buttressed by the introduction to the Interim General Manager subsequent to the firing on January 16, 2018, when the Board indicated a change in organizational culture and treatment of employees was necessary. While Indiana is an at-will state in regard to employment, the Access to Public Records Act is clear that the public is entitled to know when a civil servant is alleged to have acted in a manner unbecoming of their position and is subsequently terminated or disciplined. Often a mutually agreed-upon separation with a large buyout is indicative of an avoidance to disclose allegations of wrongdoing either to protect an agency's "brand" or preserve an employee's reputation. This is all well and good so long as the employee did not breach the public's trust by performing their duties in a way unfitting of a public servant. However,

the purpose of the statute is to unpack that wrongdoing: not to shame the employee, but to hold the agency accountable for personnel decisions.

Not all separations are involuntary and the result of wrongdoing. An employee may simply choose to move on, or an agency may want to move in a different direction. Based on the information provided, it does not appear as if this is the case in the current instance.

A public agency may not enter into a contract if the contract unreasonably impairs the right of the public to inspect and copy an agency's records. To that end, a public agency may not enter into a contract to absolve itself of a statutory duty to create a public record. TRANSPO has unequivocally categorized the separation of the employee as "termination". Whenever an employee is terminated, a factual basis must be created under Ind. Code § 5-14-3-4(b)(8)(C). Deferring to a "Not for Cause" provision to trigger a compensatory damage settlement is obfuscating the factual basis. In Opinion of the Indiana Public Access Counselor 16-FC-164, I stated:

"Factual basis" is not a term of art. It should include actual facts of the misdeeds supporting a policy violation. It does not have to be a detailed narrative or include names of victims or specific summaries, but it should give the reader a reasonable idea of why someone was fired, suspended or demoted.

It appears as if this situation warranted such as statement subsequent to the termination of the employee.

## **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that the South Bend Public Transportation Corporation has violated the Access to Public Records Act for not disclosing the factual basis of an employee's termination.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

**Luke H. Britt**  
**Public Access Counselor**